

**EPA**

United States Environmental Protection Agency  
Washington, D.C. 20460  
**Water Compliance Inspection Report**

Form Approved  
OMB No.2040-0057 Approval  
Expires  
8-31-98

**Section A: National Data System Coding (i.e., PCS)**

Transaction Code	NPDES	yr/mo/day	Inspection Type	Inspector	Facility Type
N	KYR106418 & 6419	2006/04/20	}	J	2

Remarks

Inspection Work Days	Facility Self Monitoring Evaluation Rating	B1	QA	-----Reserved-----
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**Section B: Facility Data**

Name and Location of Facility Inspected	Entry Time/Date	Permit Effective Date
Gess Property (Ball Homes) Parcels 4 & 5 Portion of 400 & 480 Chilesburg Road Lexington, KY 40509	9:00 am / 4-20-06	10/01/02
	Exit Time/Date: 12:00 pm / 4-20-06	Permit Expiration Date: 09/30/07

**Names of On-Site Representative(s)/Title(s)/Phone and Fax Number(s)**

Mr. Lee Fields - Manager  
P.O. Box 12950  
3609 Walden Drive  
Lexington, KY 40583  
Phone: (859) 268-1191  
Fax: (859) 268-9093

**Other Facility Data  
KDEP**

Mitzi Delius - Environmental Inspector  
Division of Water  
Frankfort Regional Office  
643 Teton Trail Suite B  
Frankfort, KY 40601-1758  
Ph: (502) 564-3358  
Fx: (502) 564-5043

**Name, Address of Responsible Official/Title/Phone and Fax Number**

Mr. D. Ray Ball, Jr.  
Ball Homes, Inc.  
3609 Walden Drive  
Lexington, KY 40517

Contacted

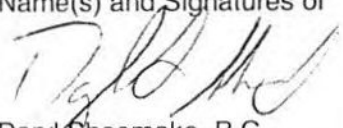
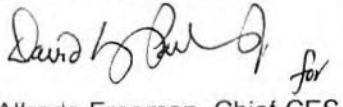
Tel. (859) 268-1191

Yes **X** No**Section C: Areas Evaluated During Inspection (Check only those areas evaluated)**

<input checked="" type="checkbox"/> Permit	<input type="checkbox"/> Flow Measurement	<input type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> CSO/SSO (Sewer Overflow)
<input type="checkbox"/> Records/Reports	<input type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Sludge Handling/Disposal	<input type="checkbox"/> Pollution Prevention
<input type="checkbox"/> Facility Site Review	<input type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pretreatment	<input type="checkbox"/> Multimedia
<input type="checkbox"/> Effluent/Receiving	<input type="checkbox"/> Laboratory	<input checked="" type="checkbox"/> Storm Water/BMP	<input type="checkbox"/> Other: Sampling

**Section D: Summary of Findings/Comments (Attach additional sheets of narrative and checklist as necessary)**

See Attachment

Name(s) and Signatures of  Daryl Shoemake, P.G.	Agency/Office/Phone and Fax Numbers  EPA Region 4/WPEB/Ph:(404) 562-9792 Fx:(404) 562-9729	Date  6/28/06
Signature of Reviewer  Altreda Freeman, Chief CES	Agency/Office  EPA Region 4/WPEB/Ph:(404) 562-8977	Date  6/28/06

**EPA Form 3560-3 (Rev 9-94)** Previous editions are obsolete



# Section E: NPDES Construction Storm Water Worksheet (Kentucky)

## 1. FACILITY LOCATION INFORMATION

GPS Coordinates	Latitude	37° 59' 30"	Longitude	84° 24' 00"
Receiving Water(s) or MS4	LFUCG MS4 and Pipeline Tributary		Weather Condition Cloudy and Cool approx. 72°	
Total site area acres & disturbed acres	83	83	Construction Start Date March 2005	Construction End Date August 2006
		Date of NOI 2/4/05	Discharge to 303(d) listed or TMDL waters Parcels 4&5	N

## 2. BASIC BMP INFORMATION-Part IV.

BMP TOPICS	"BMP Plan and NOIs for Parcels 4 & 5 Sent to EPA Via Mail"	YES	NO	N/E
BMP on site?	"Parcel 4 NOI only on site with Partial Plans for Parcels 4 & 5"		X	
BMP modified or update to current conditions?	Part IV	X		
BMP identify all operators?	Part IV.H	X		
Construction schedule describe the intended sequence and implement date of BMPs?	Part IV.A	X		
Direction of storm water flow and slope identified on map?	Part IV.A	X		
Major structural/nonstructural BMP controls located on map?	Part IV.A	X		
Name of receiving water(s)/wetland(s) or MS4 listed on map?	Part IV.A		X	
Storm water discharge/outfall location(s) identified on map?	Part IV.A		X	
Address post-construction storm water management measures?	Part IV.B.3	X		
BMP maintenance requirements consistent w/permit & good engineering practices?	Part IV.E	X		
BMP design requirements consistent w/permit?		X		

A copy of BMP may be brought back to office for a complete review

## 3. SITE DESCRIPTION and BMP

(Include type of project, construction status, soil type, runoff coefficient, drainage patterns, number of outfalls, etc., and note any BMP deficiencies above)

Residential development for Parcel 4 (35 acres) and Parcel 5 (48 acres) which was originally a farm. Status of development is 20% complete as the mass grading is complete and some housing is being constructed. Soil type consists of silty, sand and clay, light brown in color. Runoff Coefficient not given. The terrain is fairly flat with drainage mainly toward the middle of the site in-between Parcels 4 & 5 and ultimately towards the west. There are approximately 6 outfalls; four which discharge toward the center of the site and two in the northern portion of Parcel 4.

## 4. RECORD REVIEW - Part II.1.(b)(e)

Record Review	"Records sent to EPA via mail."	YES	NO	N/E
Representative on-site		X		
Records available on-site			X	
Records of major grading activities	Part IV.A		X	
Stabilization measures initiated on site w/in 21 days after construction has ceased in an area	Part IV.B.1	X		

Inspection conducted in accordance with schedules in permit (1/7 days & w/in 24 hours after 0.5 in of rain Part IV.F "Inspections ceased March 3, 2006 for this site."		X	
Inspections conducted by qualified personnel Part IV.F		X	
Inspection reports complete and adequate (with certification of compliance) in accordance with permit Part IV.F		X	
Date of the latest inspection report and brief description of findings	March 3, 2006		
Corrective actions taken w/n 7 calendar days Part IV.F		X	

## 5. FIELD EVALUATION & BMP IMPLEMENTATION

Structural Practices Part IV.B.2	Check BMPs Listed in the BMP	Note location, quantitative description, design issue, O&M deficiencies (including the nature and extent), and sediment off-site
Silt Fences	X	Silt Fences were mostly installed per the BMP but needed minor maintenance in some areas (photo #12 & #22). Silt fence was added in other areas but not denoted in the BMP.
Storm Drain Inlet/Outlet Protection (Specify: Filter Fabric, Gravel Bags, Etc.)	X	Several storm drain inlets were unprotected in Parcels 4 & 5 (photo #21 & #22). Additionally, several drop inlets located on Parcel 5 were in need of maintenance/repair (photo #25 & #26) and evidence of sediment loss was occurring.  Outlets not all protected per the BMP with aprons and geotextile. Additionally, erosion controls (outlets, silt checks, etc.) were installed in the pre-existing wetland and down stream of the lower pond, without an approved 404 permit.
Sedimentation Pond (required for every 10 disturbed acres drained or equivalent controls) Part IV.B.2	X	Approximately 4 silt traps were constructed. Two on the north side of Parcel 4 and two in Parcel 5 either in or adjacent to the pre-existing wetland. It is evident that the pre-existing lower pond is being used as a sediment pond, as direct discharges of storm water from street inlets in Parcel 4 and other discharges from various outlets (photo #1, #5, & #9) were identified to discharge to either the outlet structure beneath the main road crossing or directly into the pond (photo #3).
Retention/Detention Pond		See comments above.
Check Dams		Check dams were used below the lower pond in the creek (photo #19).
Diversion Structure (Earth Dikes, Ditches, Berms, etc.)		None used on-site.
Construction Entrance & Exit Control	X	Construction Entrance appeared adequate.
Rip Rap	X	Rip rap was not installed correctly at several outlets located within the silt checks and in the lower pond area per the BMP plan (photo #1, #3, #6, #9, & #15).
Pipe Slope Drains		None used on-site.
Drainage Swales	X	Appeared adequate at overflow areas within the silt traps.
Rock outlet protection @ outfall	X	See rip rap comments above. Additionally, the final outfall from the lowermost pond (photo #18) is inadequate.
Other Structural Practices		None used on-site.



<b>Stabilization Practices Part IV.B.1</b>	<b>Check BMPs Listed in the BMP</b>	Temporary or permanent stabilization must be initiated w/in 21 days in portions of site where construction activities have temporarily or permanently ceased
Seeding	X	Appeared to be adequate for the site.
Mulching	X	Appeared to be adequate for the site.
Sodding		Not used for this stage of construction.
Geotextiles	X	Geotextiles were not always used for the outlet ditches per the BMP plan (photo #9 & #10).
Other Stabilization Practices		None identified.
<b>Other BMP Controls to Reduce Pollutants Part III.D Part IV.C</b>	<b>Check BMPs Listed in the BMP</b>	
Proper Storage & Control of Construction Debris & Chemicals (i.e. sand, litter, paint, solvents, petroleum, & etc.)	X	Construction debris, road material, tires, concrete piping, and other miscellaneous materials and trash were identified just north of the lower pond and west of Parcel 4 (photo #27 & #28) without containment or protection from storm water run-off.
Proper Disposal of Construction Debris & Chemicals	X	Disposal practices identified in the BMP were not being implemented as identified above.
Street Cleaning	X	Streets appeared somewhat clear of sediment and debris, except where active construction of homes was taking place on the southwest side of site in Parcel 5.
Concrete Wash Down Control	X	A designated area is present but not shown on the BMP map. It is not known if there is a liner present beneath the pit which contains the washout material (photo #23 & #24). Additionally, there are no design specifications in the BMP plan.
Other Practices (i.e., truck wash area, fueling containment, control areas for maintenance, SPCC, dust control, & etc.)	X	Not identified on the BMP map.

## 6. OUTFALL, STORM WATER DISCHARGE & RECEIVING WATER OBSERVATIONS

Outfall, Storm Water Discharge & Receiving Water	YES	NO	
Number & location of storm water discharge(s)/outfall(s) consistent with the BMP	X		<i>Describe:</i> There at least six outfalls located at this site, two in the northern portion of Parcel 4, one which discharges from the upper pond, and three that discharge into the lower pond. However, the BMP plan nor the map do not identify the outfalls or any waters (name) to which they discharge.
Evidence of off-site accumulation of sediment observed in receiving water Part II.I.(b).(4)	X		<i>Describe:</i> Erosion controls (outlets, silt checks, etc.) were installed in a pre-existing wetland and downstream of the lower pond (check dams), without an approved 404 permit. Additionally, grading activities between the parcels have occurred in the lower portion of the pre-existing wetland which caused filling of the wetland area (photo #1, #5, #7, #8, and #10). Furthermore, the pre-existing lower pond outlet structure was breached and allowed further deposition of sediments into the lower creek (photo #18).



Other discharges or potential discharges off-site (not through permitted outfalls)	X		<i>Describe:</i> Debris and trash were identified in the creek emanating from the lower pond to the west of Parcels 4 & 5 (photo #20).
Non-storm water discharge observed Part III.C Part IV.G		X	<i>Describe:</i> None.

Addition inspection summary, narrative, findings, comments, photos, and schematic diagram of the project area as necessary:

SEE ATTACHED PHOTO SHEETS

Exit interview conducted with: Lee Fields, Ball Homes Representative.

# Gess Property Photo Log



Photo #1 Road crossing over pre-existing wetland area and water way to lower lake of Parcels 4 & 5.



Photo #2 Area of pre-existing lower lake to the west which receives drainage from Parcels 4 & 5.



# Gess Property Photo Log



Photo #3 Southern outlet structure which drains storm water from the site development of Parcel 5 into the pre-existing lower lake. No rock dissipater (shot rock) or channel lining present per the BMP plan.



Photo #4 SE portion of lower lake showing area of southern inlet into the lake which receives drainage from Parcel 5. Some sediment loss identified.

# Gess Property Photo Log



Photo #5 General area east of road crossing (photo #1) showing several storm water structures constructed in the pre-existing wetland area.



Photo #6 Inlet structure located at the road crossing (photo #1) constructed on the western portion of the pre-existing wetland (part of photo #5). Rock dissipater not installed per BMP.



# Gess Property Photo Log



Photo #7 Same area as shown in photo #5 showing structures and clearing activities in pre-existing wetlands.



Photo #8 Same area as photo #5 showing cleared areas of pre-existing wetland.



# Gess Property Photo Log



Photo #9 Northern Outlet structure draining storm drain inlets from Parcel 4 into the pre-existing wetland area.

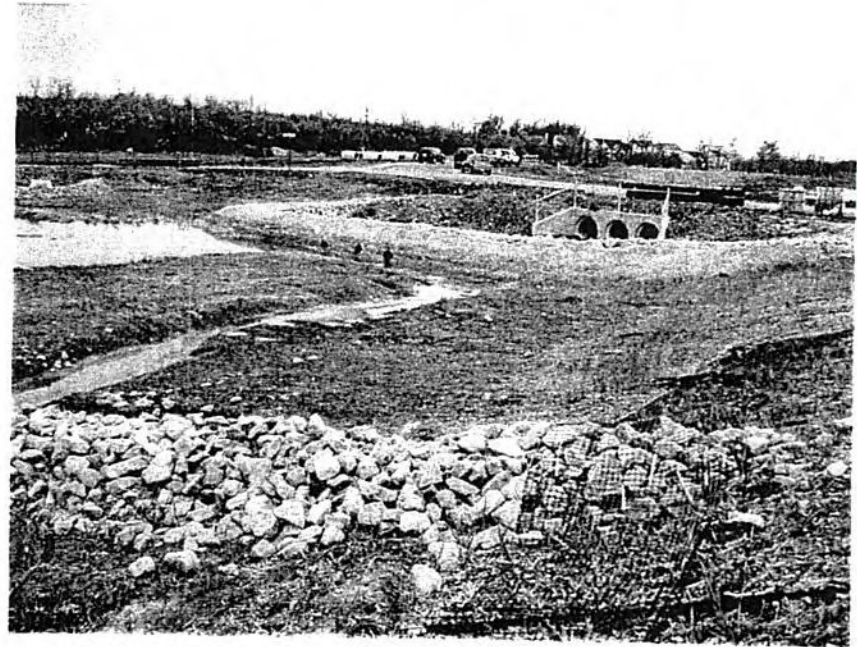


Photo #10 Another view away from photo #9 showing western portion of pre-existing wetland area towards lower lake on west side of site.



# Gess Property Photo Log

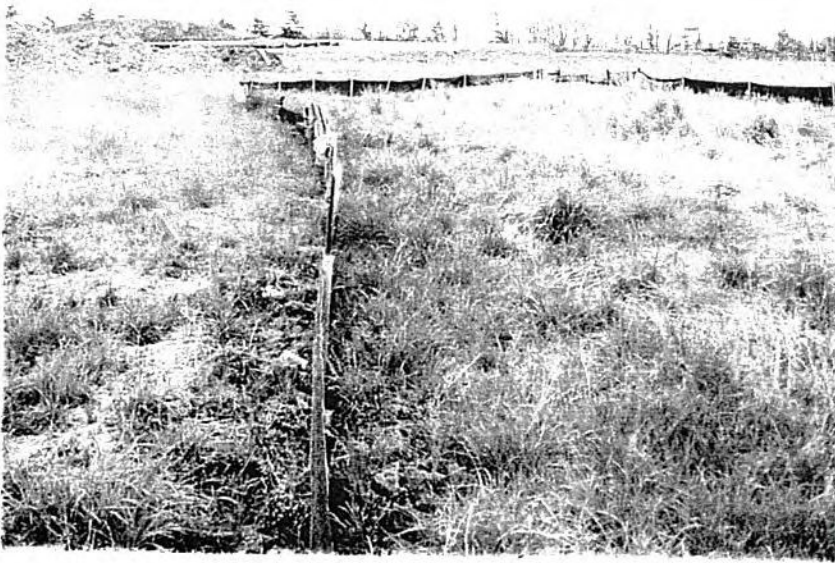


Photo #11 Area between Eastern and Western ponds just east of the pre-existing wetland area showing silt fence installation.



Photo #12 Area between Eastern and Western ponds just east of the pre-existing wetland area showing silt fence near prior stream.

# Gess Property Photo Log

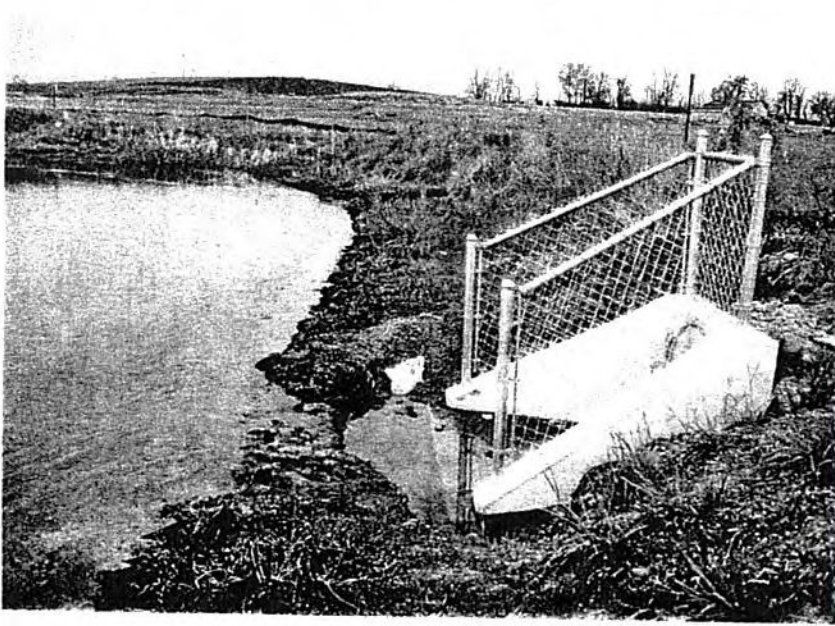


Photo #13 Outlet structure which drains the upper eastern pond.



Photo #14 Close-up view of base of outlet structure draining the upper eastern pond.



# Gess Property Photo Log



Photo #15 Outlet structure which drains storm water into a constructed silt trap from inlets on Parcel 5. No flow dissipater or apron installed.

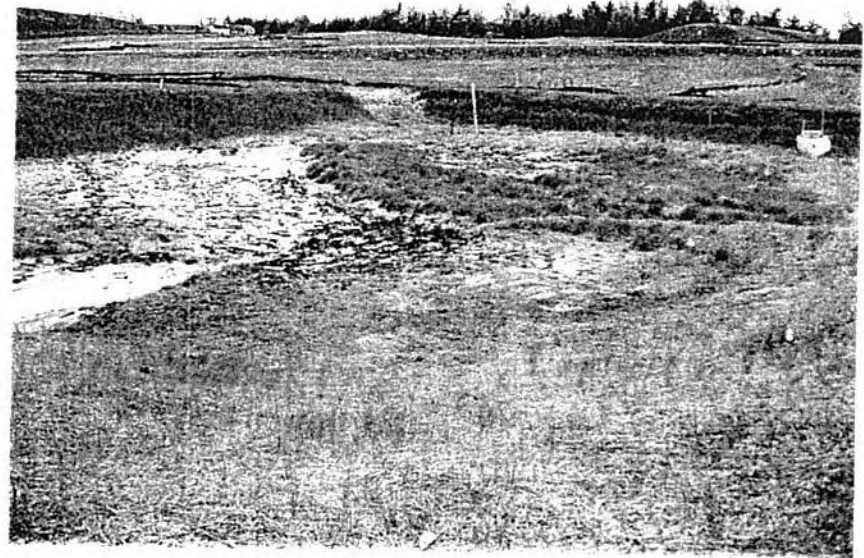


Photo #16 Area of constructed silt trap (photo # 15) showing the overflow spill way toward the north.



# Gess Property Photo Log

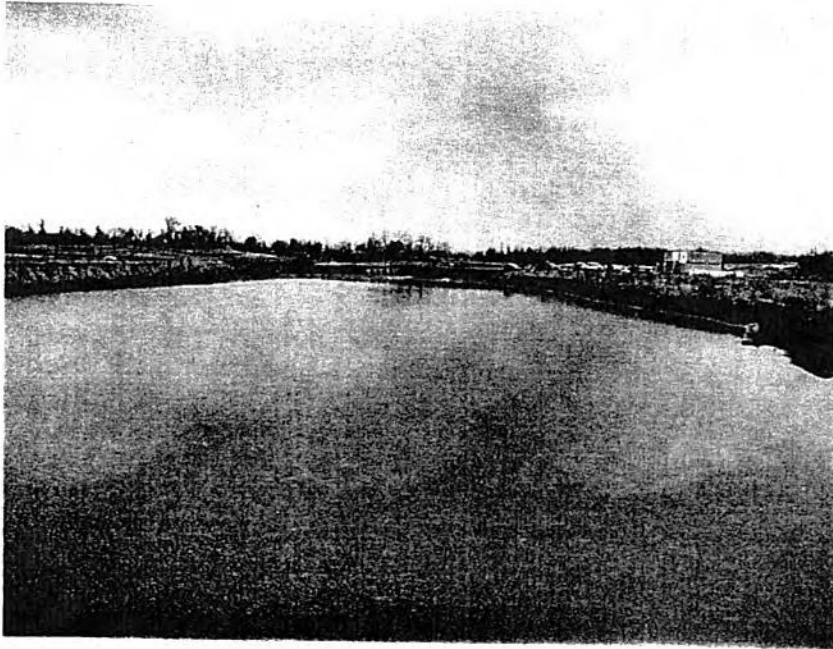


Photo #17 View of lower pre-existing pond looking from the west to the east.

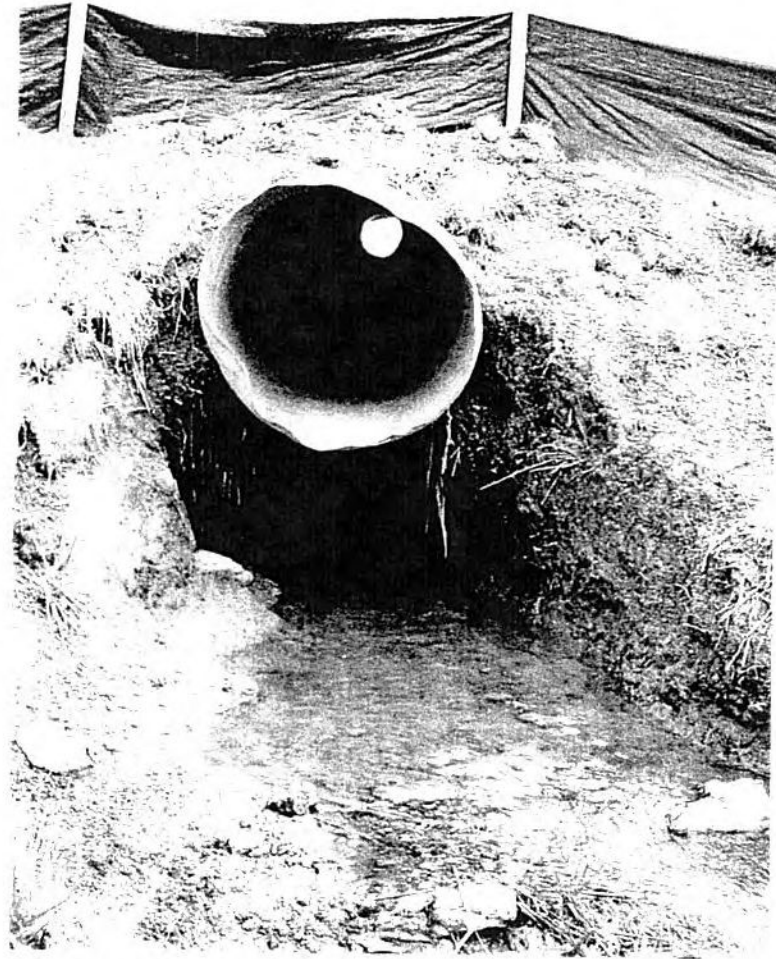


Photo #18 Outlet structure from lower pond showing a breach of the outlet structure beneath it.



# Gess Property Photo Log



Photo #19 Area west of the lower pond showing a check dam constructed in the intermittent stream.



Photo #20 Another area further west of the lower pond showing debris and trash in the intermittent stream.

# Gess Property Photo Log

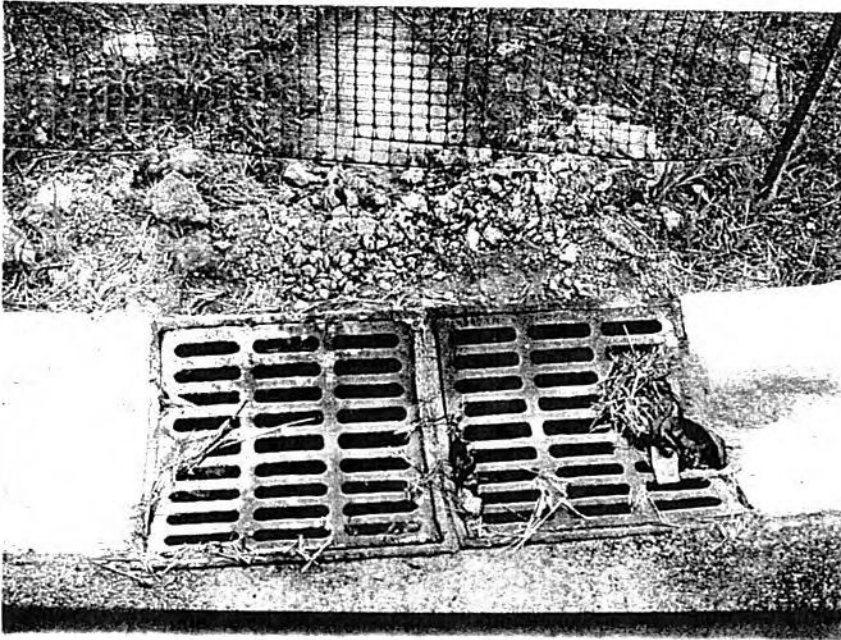


Photo #21 Road inlet in Parcel 4 showing no protection of inlet that drains directly to the lower pond. It also appears that concrete wash out has occurred and has entered the inlet.

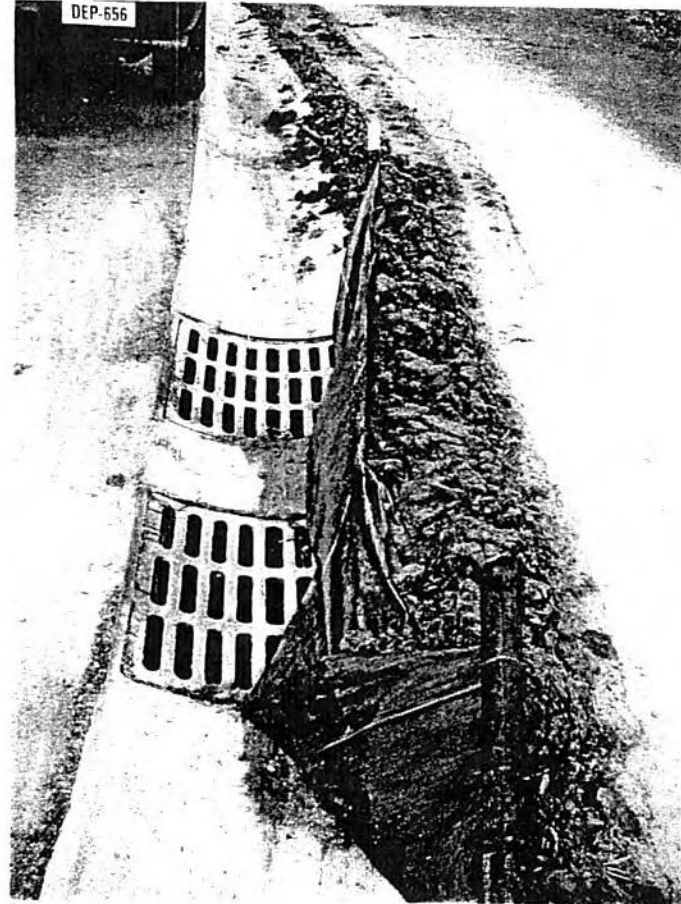


Photo #22 Additional inlet structures in Parcel 5 shown with no protective measure to prevent sediment loss. Also, the silt fence is not maintained/properly installed.



# Gess Property Photo Log



Photo #23 Concrete wash-out area located on southern portion of property. It is unknown if a liner is present to prevent infiltration.



Photo #24 Concrete wash-out area located on southern portion of property.



# Gess Property Photo Log

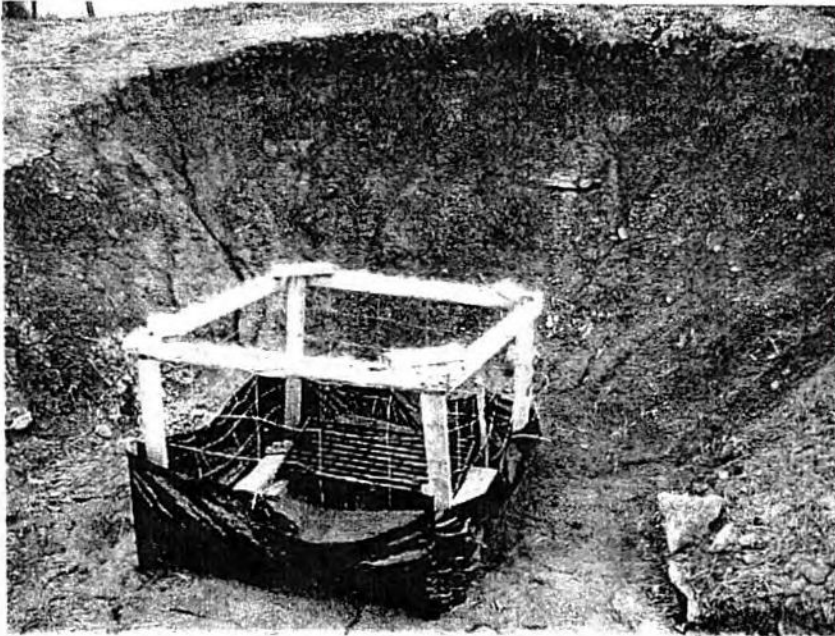


Photo #25 Drop inlet located on southern portion of Parcel 5 showing maintenance problems and infiltration of sediment.



Photo #26 Another drop inlet located on southern portion of Parcel 5 showing maintenance problems and infiltration of sediment.



# Gess Property Photo Log



Photo #27 Construction debris located on northwest portion of site near borrow area showing little to no protection from storm water runoff.



Photo #28 Construction debris located on northwest portion of site showing little to no protection from storm water runoff.

# ADMINISTRATIVE ACTION DATA SHEET

(To Be Submitted to OEA When:

- (1) a Complaint is Filed;
- (2) When a CAFO(b) Filed, Along with a Case Conclusion Data Sheet
- (3) a Non-Penalty Order is Issued; Along with a Case Conclusion Data Sheet)

1. Court Docket/Regional Hearing Clerk Docket No. CWA 04-2006-4786

2. Case Name Ball Homes LLC

EPA Lead Attorney Judy Marshall Phone No. 2-9533

EPA Program Contact Daryl Shoemake Phone No. 2-9792

## Facility Information

Information for One Facility (If More Facilities, Attach Additional Pages.)

(Use Location of Site of Violation; **DO NOT** use a P.O. Box #.)

9. Facility Name Gess Properties Parcel 4 & 5

10. Street Address Portion of 400 & 480 Chilesburg Road County Fayette

City Lexington State KY Zip Code 40509

Primary 4-Digit SIC Code 1521 (b) Other 4-Digit SIC Codes \_\_\_\_\_, \_\_\_\_\_

EPA FRS No. KYR106418

Is This a Federal Facility? Yes X No

Is This Indian Land? Yes X No

If Yes, What Tribe? \_\_\_\_\_

Is This a Small Business? X Yes No

("A person, corporation, partnership, or other entity that employs 100 or fewer employees.")

Has an EJ GIS Analysis Been Completed? X Yes No

If No, Please See Serdar Ertep at 2-9683 Before Continuing

Is The Facility Located in a Potential EJ Area of Concern? Yes X No

If Yes: Low Income Minority Population Both Other

Note: Question Numbers Correspond with the Case Conclusion Data Sheet Guidance Booklet, Dated August 2004.  
If You Have Any Questions, Please Contact Teresa Shirley-Wright at 2-9647 or Priscilla Johnson at 2-9614.



## 7. Respondents/PRPs List:

[illegible]

Continue on Attached Page, if Necessary

8. Statute(s) and Section(s) Violated (**NOT** Authorizing Section Nor CFR):

\_\_\_ CWA \_\_\_ / \_\_\_ 301 \_\_\_; \_\_\_ CWA \_\_\_ / \_\_\_ 308 \_\_\_; \_\_\_ CWA \_\_\_ / \_\_\_ 402 \_\_\_

Authorizing Section for Administrative Actions: \_\_\_ CWA \_\_\_ / \_\_\_ 309 \_\_\_

If CERCLA, Is the Site on the NPL? \_\_\_ Yes \_\_\_ No

12. CFR Violation Citation(s):

40 CFR Part 122.26 Section \_\_\_\_\_ 40 CFR Part \_\_\_\_\_ Section \_\_\_\_\_

40 CFR Part \_\_\_\_\_ Section \_\_\_\_\_ 40 CFR Part \_\_\_\_\_ Section \_\_\_\_\_

Is this a MULTI-MEDIA action? \_\_\_ Yes \_\_\_ **X** No

If Yes, check all that apply:

**CAA:**

\_\_\_ Mobile Source (Title II)  
\_\_\_ Stationary Source (Other Than Title II)  
\_\_\_ Prevention of Accidental Releases (112(r))

**CERCLA:**

\_\_\_ Hazardous Site Response (CERCLA Superfund  
Other Than 103 and/or RCRA 3013 or 7003

**CWA:**

\_\_\_ NPDES (Other Than 311 and 404)  
\_\_\_ Oil Pollution (311)  
\_\_\_ Wetlands (404)

**EPCRA or EPCRA/CERCLA**

\_\_\_ Community Right-to-Know (313)  
\_\_\_ Release Notification/Emergency Preparedness  
(Non-313 and/or CERCLA 103)

**FIFRA:**

\_\_\_ Pesticides

**MPRSA:**

\_\_\_ Ocean Dumping

**RCRA:**

\_\_\_ Hazardous Waste Mgmt (Subtitle C)  
\_\_\_ Solid Waste Mgmt (Subtitle D)

**SDWA:**

\_\_\_ Public Water Supply (1414 et seq.)  
\_\_\_ UIC (1421 et seq.)

**TSCA:**

\_\_\_ Asbestos Hazardous Emergency Response  
Act (201)  
\_\_\_ Lead Exposure Reduction (409)  
\_\_\_ PCBs (6(e))  
\_\_\_ Toxic Substances (Other Than Lead or PCBs)

**UST:**

\_\_\_ Underground Storage Tanks (Subtitle I)

Was The Agency Activity Taken in Response to Environmental Justice Concerns? \_\_\_ Yes \_\_\_ **X** No

If Yes: \_\_\_ Minority \_\_\_ Low Income \_\_\_ Both



## PRIORITY INFORMATION

### MOA Priority (Check All That Apply):

#### CAA Air Toxics:

- ☐ NSR/PSD Non-Coal-Fired Power Plant
- ☐ NSR/PSD Coal-Fired Power Plant

#### Wet Weather:

- ☐ CAFO (AFLOT)
- ☐ CSO (CSO)
- ☐ SSO (SS)
- ☐ Stormwater - MS4
- ☐ Stormwater - Industrial Non-Construction
- ☒ Stormwater - Industrial Construction

#### Petroleum Refining:

- ☐ Petroleum Refining

#### Tribal:

- ☐ Tribal

#### Mineral Processing:

- ☐ Phosphoric Acid
- ☐ Non-Phosphoric Acid
- ☐ Mining

### Regional Priority (Check All That Apply):

- ☐ Wood Preserving Facilities
- ☐ Ready-Mix Concrete
- ☐ Hospitals
- ☐ Coastal & Inland Marinas
- ☐ Corrective Action Facilities
- ☐ Geographic Initiative
- ☐ Hazardous Waste Facilities
- ☐ Metal Galvanizers
- ☐ Mobile Bay Compliance Assurance Initiative
- ☐ Plastics & Synthetic Resin Manufacturers
- ☐ Textile Industry
- ☐ Other, Please Specify:

\_\_\_\_\_

Date Complaint Filed: 09 23 2006

**Proposed** Penalty Amount \$ \_\_\_\_\_  
(Should be Amount Prior to Reductions Using a  
Penalty Policy.)

Is This An Amended Complaint: ☐ Yes ☐ No

AND/OR Proposed Cost  
Recovery Amount \$ \_\_\_\_\_

#### Self Disclosure Information

Did Company Self-Disclose Violations? ☐ Yes ☒ No

Does Company Have Less Than 100 Employees? ☒ Yes ☐ No  
(Note: If Yes, Treat As If Violations Were Disclosed Under EPA's Small Business Policy)

Date Violations Disclosed:        /        /       

Has the Inspection Information Been Entered into ICIS? ☒ Yes ☐ No

If Yes, What is the ICIS Compliance Monitoring Activity Name (Exactly): Storm Water 4/20/06

What Type of Inspection was Conducted (Statute/Section)? CWA 308(A)(B) Records & Reports; Inspections

Date of Inspection: April 20, 2006



## Violation Types

### NPDES

- ☐ Animal Feedlots
- ☐ Discharge, Emission, or Activity Without a Required Permit
- ☐ Sanitary Sewer Overflows
- ☐ Stormwater Overflows
- ☒ Violation of a Permit Requirement
- ☒ Violation of Requirement to Monitor/Maintain Records
- ☐ Violation of Sludge Disposal Requirements

### UIC

- ☐ Casing & Cementing
- ☐ Injection Between Outermost Casing
- ☐ Injection Beyond Authorized Pressure
- ☐ Mechanical Integrity
- ☐ No Approved Plugging & Abandonment Plan
- ☐ Non-Compliance with Plugging & Abandonment Plan
- ☐ Unauthorized Injection
- ☐ Unauthorized Operation of Class IV Well
- ☐ Violation of Reporting Requirements
- ☐ Violation of Requirement to Monitor/Maintain Records
- ☐ Other/Miscellaneous

### PWS

- ☐ Failure to Submit DMR
- ☐ Maximum Contaminant Level
- ☐ Monitoring/Reporting

☐ Notification to Public

☐ Sampling & Analyzing

☐ Total Coliform Rule

☐ Violation of a Permit Requirement

☐ Other/Miscellaneous



## CASE CONCLUSION DATA SHEET

(To be Submitted to OEA When:

- (1) Judicial Consent Decrees/Orders are Entered by Court
- (2) Administrative Penalty Settlements are Filed, Along with an Administrative Action Data Sheet
- (3) Administrative Non-Penalty Orders are Issued, Along with an Administrative Action Data Sheet)

**Note: Form will be returned if this section is incomplete:**

Name of Person Completing Form: Daryl Shoemake Date: 6/29/06

Signature of Program Office Supervisor or Designee: [Signature] Date: 7/7/06

### A. Case and Facility Background

1. Court Docket/Regional Hearing Clerk Docket No. CWA 04-2006-4786

2. Case Name Ball Homes LLC

3. Settlement Action Type:

- ☐ (a) Consent Decree or Court Order Resolving a Civil Judicial Action
- ☐ (b) Administrative Penalty Order (with/without Injunctive Relief)
- ☐ (c) Superfund Administrative Cost Recovery Agreement
- ☐ (d) Federal Facility Compliance Agreement (NOT including RCRA Matters)
- ☐ (e) Field Citations
- ☒ (f) Administrative Compliance Orders
- ☐ (g) Notice of Determination (Self-Disclosure Cases)

4(a) EPA Lead Attorney Judy Marshall Phone No. 2-9533

4(b) EPA Program Contact Daryl Shoemake Phone No. 2-9792

5. Was An Environmental Management System Requested? ☐ Yes ☒ No

6. Action Dates (Complete **EITHER** Administrative or Judicial):

Administrative:

Issued/Filed JUL 28 2006 Final Order JUL 28 2006

Judicial:

Complaint Filed \_\_\_\_\_

Settlement Lodged \_\_\_\_\_

Settlement Entered \_\_\_\_\_

Estimated Termination Date: TBD

8. Statute(s) and Section(s) **Violated** (NOT Authorizing Section Nor CFR):

CWA / 301; CWA / 308; CWA / 402; \_\_\_\_\_ / \_\_\_\_\_

**Authorizing** Section for Administrative Actions: CWA / 309

9. Facility Name Gess Properties State KY

How Many Facilities Are Associated With This Action? 1

Are Any of These Facilities Located Outside Region IV? ☐ Yes ☒ No

## ALTERNATIVE DISPUTE RESOLUTION

15. Was Alternative Dispute Resolution (ADR) Used in This Case?

☐ Yes

☒ No (Skip to Next Page.)

# of Parties in Your Case? \_\_\_\_\_

# Of Parties Taking Part in Mediation? \_\_\_\_\_

Which ADR Process or Processes Were Used? (Can Check More Than One)

☐ Facilitation

☐ Facilitated Negotiation

☐ Mediation for One Part of Case

☐ Mediation for Entire Case

☐ For Cost/Allocation/Penalties

☐ For Injunctive Relief

☐ Other

Who was Your Mediator? \_\_\_\_\_

How Did You Obtain Your Mediator? \_\_\_\_\_

Was This Mediator Effective?

☐ Yes. How So? \_\_\_\_\_

☐ No. Why Not? \_\_\_\_\_

Was ADR Useful in Fostering Clearer and More Effective Communication Between  
The Parties? ☐ Yes ☐ No

Did ADR Help Resolve the Conflict it was Selected For? ☐ Yes ☐ No

If Not, Why Not? \_\_\_\_\_

Did ADR Help Resolve Conflicts That Were Apart From the Conflict it was Selected For?

☐ Yes. Why? \_\_\_\_\_

☐ No

Were you Satisfied with the ADR Process You Went Through in Your Case?

☐ Yes Why? \_\_\_\_\_

☐ No Why Not? \_\_\_\_\_

Would You Consider Using ADR Again? ☐ Yes ☐ No

If Yes, What Would You Anticipate Using it For? \_\_\_\_\_

If No, Why Not? \_\_\_\_\_

How Could the Usefulness of ADR Have Been Improved in Your Case? \_\_\_\_\_

How Could EPA's Use of ADR be Improved in General? \_\_\_\_\_

How Could EPA Better Assist You in Obtaining and Effectively Using ADR Services? \_\_\_\_\_

\_\_\_\_\_



**B. Penalty Information** (If there is no penalty, enter 0 and proceed to Page 6.)

11. For Multi-Media Actions, Federal Amounts by Statute:

Statute	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____

12(a). Total Assessed Penalty \$ \_\_\_\_\_

12(b). (If Shared) Federal Share \$ \_\_\_\_\_

13. (If Shared) State or Local Share \$ \_\_\_\_\_

**C. Cost Recovery**

14. Amount of Cost Recovery Awarded:

\$ \_\_\_\_\_ EPA Share

\$ \_\_\_\_\_ State and/or Local Government Share

\$ \_\_\_\_\_ Other

Was this an overfile action? \_\_\_\_ Yes     X  No

(Overfiling occurs when (1) a state/local delegated or approved program has taken no action or an inadequate action to address a violation at a facility; AND (2) EPA takes an enforcement action against the same facility for the same violation; AND (3) the state has not joined with EPA in the EPA action nor asked EPA to bring the action.)

## 2006 PRIORITY INFORMATION

### MOA Priority (Check All That Apply):

#### CAA Air Toxics:

- ☐ Air Toxics
- ☐ NSR/PSD Non-Coal-Fired Power Plant
- ☐ NSR/PSD Coal-Fired Power Plant

#### Wet Weather:

- ☐ CAFO (AFLOT)
- ☐ CSO (CSO)
- ☐ SSO (SS)
- ☐ Stormwater - MS4
- ☐ Stormwater - Industrial Non-Construction
- ☒ Stormwater - Industrial Construction

#### Petroleum Refining:

- ☐ Petroleum Refining

#### Tribal:

- ☐ Tribal

#### Mineral Processing:

- ☐ Phosphoric Acid
- ☐ Non-Phosphoric Acid
- ☐ Mining

#### Financial Assurance:

- ☐ Financial Assurance

### Regional Priority (Check All That Apply):

- ☐ Wood Preserving Facilities
- ☐ Ready-Mix Concrete
- ☐ Hospitals
- ☐ Coastal & Inland Marinas
- ☐ Corrective Action Facilities
- ☐ Geographic Initiative
- ☐ Hazardous Waste Facilities
- ☐ Metal Galvanizers
- ☐ Mobile Bay Compliance Assurance Initiative
- ☐ Plastics & Synthetic Resin Manufacturers
- ☐ Textile Industry
- ☐ Other, Please Specify:



### C. Supplemental Environmental Project (SEP) Information

15. Is Environmental Justice Addressed by SEP? ☐ Yes ☒ No

16. SEP Description \_\_\_\_\_  
\_\_\_\_\_

17. Categories of SEPs (Check all appropriate categories. If no, proceed to #25)

- ☐ (a) Public Health
- ☐ (b) Pollution Prevention (Complete Question #19)
- ☐ (1) Equipment/Technology Modifications
- ☐ (2) Process/Procedure Modifications
- ☐ (3) Product Reformulation/Redesign
- ☐ (4) Raw Material Substitution
- ☐ (5) Improved Housekeeping/O&M/Training/Inventory Control
- ☐ (6) In-Process Recycling
- ☐ (7) Energy Efficiency/Conservation
- ☐ (c) Pollution Reduction (Complete Question #19)
- ☐ (d) Environmental Restoration and Protection
- ☐ (e) Assessments and Audits
- ☐ (f) Environmental Compliance Promotion
- ☐ (g) Emergency Planning and Preparedness
- ☐ (h) Other Program Specific SEP (Specify) \_\_\_\_\_

18. Cost of SEP. Cost Calculated by the PROJECT Model is Preferred. \$ \_\_\_\_\_

19. Quantitative Environmental Pollutants and/or Chemicals and/or Waste Streams, Amount of Reductions/Eliminations (e.g. Emissions/Discharges)

Pollutants/Chemical Waste Stream	Annual Amount <b>CHECK ONE:</b> <input type="checkbox"/> Reduced <input type="checkbox"/> Eliminated <input type="checkbox"/> Treated	Units**	Potentially Impacted Media***
_____	_____	_____	_____
_____	_____	_____	_____

**\*\*Acceptable Units:**

Pounds Per Year  
People  
Acres  
Linear Feet (Small Stream)  
Linear Feet (Medium Stream)  
Linear Feet (Large Stream)  
Gallons Per Year  
Pounds

**\*\*\*Acceptable Impacted Medias:**

Air  
Land  
Water (Navigable/Surface)  
Water (Wetlands)  
Water (Wastewater to POTW)  
Water (Underground Source of Drinking Water)  
Water (Ground)  
Animals/Plants/Humans  
Buildings/Houses/Schools

**FOR SELF-DISCLOSURE CASES ONLY**  
(COMPLETE ONLY IF FACILITY SELF-DISCLOSED VIOLATIONS)

**F. Self-Disclosure Information**

Did Company Self-Disclose Violations? ☐ Yes ☒ No

Date of Disclosure: \_\_\_\_\_

Was the Disclosure Resolved Under: ☐ Audit Policy ☐ Small Business Policy

If Resolved Under Small Business Policy, Provide SIC Code: \_\_\_\_\_

Was Disclosure Referred by Another Region or HQ? ☐ Yes ☐ No

If Yes, What Office? \_\_\_\_\_

Was Disclosure Part of Compliance Incentive Program? ☐ Yes ☐ No

If Yes, Choose All That Apply

- |  |  |
|--|--|
| <input type="checkbox"/> Bakers CFC Partnership Program          | <input type="checkbox"/> Prisons Program                           |
| <input type="checkbox"/> CMOM POTW Program                       | <input type="checkbox"/> Storage Tank Emission Reduction Program   |
| <input type="checkbox"/> Colleges & Universities Program         | <input type="checkbox"/> Stormwater/Commercial Development Program |
| <input type="checkbox"/> Grain Processing Program                | <input type="checkbox"/> Telecommunications Incentive Program      |
| <input type="checkbox"/> Industrial Organic Chemical Program     | <input type="checkbox"/> Wood Treaters Program                     |
| <input type="checkbox"/> Lead Disclosure Program                 |  |
| <input type="checkbox"/> National Iron & Steel Incentive Program |  |
| <input type="checkbox"/> Oil & Gas Program                       |  |

Number of Facilities Associated With This Disclosure? \_\_\_\_\_

Any Outstanding Issues? ☐ Yes ☐ No (If yes, please describe): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Penalty Information:**

Penalty Calculation Before Mitigation: \$ \_\_\_\_\_

% or Amount of Gravity-Based Penalty Waived: \_\_\_\_\_% OR \$ \_\_\_\_\_

Gravity-Based Penalty Assessed: \$ \_\_\_\_\_

Economic Benefit Assessed: \$ \_\_\_\_\_

**Rationale for Not Applying Disclosure Policy:**

- |  |   |
|--|---|
| <input type="checkbox"/> No Violation Occurred                                   | <input type="checkbox"/> Not a Systematic Discovery                                 |
| <input type="checkbox"/> Discovery Not Voluntary                                 | <input type="checkbox"/> Disclosure Not Prompt                                      |
| <input type="checkbox"/> Entity Had Repeat Violations                            | <input type="checkbox"/> Agreement or Order Violated                                |
| <input type="checkbox"/> Violation(s) Not Corrected Expeditiously                | <input type="checkbox"/> Discovery & Disclosure Not Independent                     |
| <input type="checkbox"/> Cooperation Insufficient                                | <input type="checkbox"/> Actual Serious Harm or Imminent & Substantial Endangerment |
| <input type="checkbox"/> Federal Facility That Would Not Be Liable for a Penalty |   |



**E. Injunctive Relief/Compliance Actions (Non-SEP Related)**

**Note: Penalty orders without injunctive relief and Superfund administrative cost recovery agreements SHOULD SKIP THIS SECTION.**

20. What action did violator accomplish prior to receipt of settlement/order or will take to return to compliance or meet additional requirements (other than what has already been reported on the Inspection Conclusion Data Sheet (ICDS)). This may be due to settlement/order requirements or otherwise required by statute or regulations (e.g. actions related to an APO which did not specify compliance requirements). Where separate penalty and/or compliance orders are issued in connection with same violation(s), report the following information for only one. Select response(s) from the information on pages 6 through 21.

Explanation for "Annual Amount" field: OECA has conservatively chosen to use one year as the period of time over which a reduction/elimination credit is taken. OECA is requesting that the annual pollutant reduction ONCE the complying action(s) has been fully implemented be reported on this form. Thus, if the pollutant reduction is a continuous action (e.g., implementation of a treatment technology), you would report one year's worth of pollutant removal benefits. For example, if the complying action will include the addition of new treatment technology over several years at a facility, then the pollutant benefit for purposes of completing this form represents the pollutant reduction that occurs over one year once the technology has been put into place. If the pollutant reduction occurs as a one time (or short term) action, then you should report the total pollutant removal benefit.

## ALL STATUTES

### FACILITY/SITE MANAGEMENT AND INFORMATION PRACTICES (FMIP)

(Actions That Do Not Result in Pollutant Reductions/Eliminations)

Cost: \$ 2,000 (REQUIRED! Form will be returned if this field is blank!)

- ☐ Testing/Sampling
- ☐ Auditing
- ☐ Labeling
- ☒ Recordkeeping
- ☐ Reporting
- ☐ Information Letter Response
- ☐ Financial Responsibility Requirements
- ☐ Environmental Management Review
- ☐ RI/FS or RD (CERCLA)
- ☐ Site Assessment/Characterization (CERCLA)
- ☐ Provide Site Access (CERCLA)
- ☐ Monitoring
- ☐ UST Release Detection
- ☒ Stormwater Site Inspections
- ☐ Asbestos Inspections
- ☐ Training
- ☐ Planning
- ☐ Permit Application
- ☐ Work Practices
- ☐ Notification (TSCA Section 6)
- ☐ Leak Detection (CAA)
- ☐ Spill Notification
- ☐ Develop/Implement CMOM Program (CWA)
- ☐ Establishment Registered (FIFRA)
- ☐ Establishment Terminated (FIFRA)

Has EPA Taken Previous Formal Enforcement Action Regarding These Violations? (Does Not Include NOVs)

☐ Yes ☒ No

If Yes, Docket Numbers of Previous Actions: \_\_\_\_\_



## NPDES

For instructions and methodologies for calculating information for Direct Environmental Benefits and Preventative Actions, refer to **Chapter 5** of the Case Conclusion Data Sheet Guidance, Dated August 2004.

### Actions With **DIRECT** Environmental Benefits and/or **DIRECT** Response/Corrective Action:

Cost: \$ 20,000 (REQUIRED! Form will be returned if this field is blank!)

#### NPDES Sections 301 (Discharge Without a Permit):

☐ Source Reduction

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Lbs Per Year</u>	<u>Navigable/Surface Water</u>
2. _____	_____	<u>Lbs Per Year</u>	<u>Navigable/Surface Water</u>

#### NPDES Sections 301/307 (Toxic and Pretreatment Effluent Standards):

☐ Industrial/Municipal Process Change

☐ Emissions/Discharge Change

☐ Implement BMPs

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Lbs Per Year</u>	<u>Wastewater to POTW</u>
2. _____	_____	<u>Lbs Per Year</u>	<u>Wastewater to POTW</u>

#### NPDES Sections 301/402 (Wet Weather/Other Permit Violations):

☐ Industrial/Municipal Process Change

☐ Emissions/Discharge Change

☒ Implement BMPs

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u> <b>CHECK ONE:</b>	<u>Potentially Impacted Media</u>
1. <u>Sediment</u>	<u>499,913</u>	<input checked="" type="checkbox"/> Lbs Per Year <input type="checkbox"/> Gallons <input type="checkbox"/> Pounds	<u>Navigable/Surface Water</u>
2. _____	_____	<input type="checkbox"/> Lbs Per Year <input type="checkbox"/> Gallons <input type="checkbox"/> Pounds	<u>Navigable/Surface Water</u>

If additional pollutants (and corresponding information) should be listed, attach info to end of this form.

**NPDES Direct Environmental Benefits Continued:****NPDES Section 405 (Sewage Sludge Disposal):**

\_\_\_ Disposal Change

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Pounds</u>	<u>Wastewater to POTW</u>
2. _____	_____	<u>Pounds</u>	<u>Wastewater to POTW</u>

**NPDES Section 504 (Emergency Powers):**

\_\_\_ Industrial/Municipal Process Change

\_\_\_ Emissions/Discharge Change

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Gallons</u>	<u>Wastewater to POTW</u>
2. _____	_____	<u>Gallons</u>	<u>Wastewater to POTW</u>

If additional pollutants (and corresponding information) should be listed, attach info to end of this form.

**PREVENTATIVE Actions to Reduce Likelihood of Future Releases:****CWA Sections 301/402 (NPDES Wet Weather/Other Permit Violations):**

\_\_\_ Storage Change

Cost: \$ \_\_\_\_\_ (REQUIRED! Form will be returned if this field is blank!)

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<input type="checkbox"/> Lbs Per Year	<u>Media</u> <u>Navigable/Surface Water</u>
		<input type="checkbox"/> Miles of Stream Impacted	
		<input type="checkbox"/> Pounds	
		<input type="checkbox"/> Lbs Per Year	
2. _____	_____	<input type="checkbox"/> Miles of Stream Impacted	<u>Media</u> <u>Navigable/Surface Water</u>
		<input type="checkbox"/> Pounds	
		<input type="checkbox"/> Lbs Per Year	
		<input type="checkbox"/> Miles of Stream Impacted	

If additional pollutants and corresponding info should be listed, attach information to end of this form.





## Document Review

IFMS Document: BD  
2740743W298

04/26/07

**Document Summary:** General Ledger Entries**Document:** BD 2740743W298**SFO:** AP27**Date:** 04/10/07**Amount:** \$40,000.00**Collected:** \$40,000.00**Closed:** 04/19/07**Due From:** BALL HOMES, LLC

MR. D. RAY HALL, JR

3609 WALDEN DRIVE,

LEXINGTON, KY 40583

**Due Date:** 05/10/07**Comments:** CWA04074509**Interest:** \$0.00**Handling:** \$0.00**Penalty:** \$0.00**Writeoff:** \$0.00**Document Details:**

Line	Line Amt	Collected	Writeoff	Closed	Int Rate	Reporting Category
001	\$40,000.00	\$40,000.00	\$0.00	\$40,000.00	4.000	43-FINES, PENALTIES: CLEAN WATE

**Document Activity:**

Date	Ref Amount	Related Document	Direction	Date	Ref Amount	Related Document	Date	R
04/19/07	\$40,000.00	CR 2740743W298	Forward					
04/12/07	\$40,000.00	Increase						

Warehouse Homepage

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[http://iasint.rtpnc.epa.gov/neis/ifms\\_doc.resolve](http://iasint.rtpnc.epa.gov/neis/ifms_doc.resolve)

This web page was last updated on 03/10/2007.

This data was last updated on 04/26/2007 12:04

This page coordinated by: Kelvin Whyms



P.O. Box 12950  
3609 Walden Drive  
Lexington, KY 40583  
859.268.1191  
1.888.268.1101  
859.268.9093: fax  
www.ballhomes.com

April 16, 2007

US Environmental Protection Agency  
Cincinnati Accounting Operations  
Mellon Lockbox 371099M  
Pittsburg, PA 15251-7099

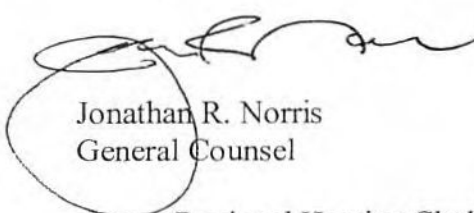
RE: Respondent: Ball Homes, LLC, Docket No. CWA-04-2007-4509 (b), Gess Properties,  
Parcels 4 & 5, Lexington, KY

Ladies and Gentlemen:

Enclosed you will find a check payable to the order of the Treasurer, United States of America in the amount of \$40,000. The enclosed payment has been made in accordance with the consent agreement and final order entered in the matter of Ball Homes, LLC, Gess Properties, Parcels 4 & 5, Lexington, KY, Docket Number CWA-04-2007-4509 (b).

Please do not hesitate to contact Jim Parsons or the undersigned at (859) 268-1191 if you have any questions regarding this matter.

Sincerely,



Jonathan R. Norris  
General Counsel

cc: Regional Hearing Clerk,  
US Environmental Protection Agency, Region 4  
61 Forsyth Street, Southwest  
Atlanta, GA 30303-8960

Mary Mattox,  
US Environmental Protection Agency, Region 4  
Water Programs Enforcement Branch  
Water Management Division  
61 Forsyth Street, Southwest  
Atlanta, GA 30303-8960





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

APR 10 2007

CERTIFIED MAIL 7005 3110 0003 6266 0110  
RETURN RECEIPT REQUESTED

Mr. D. Ray Ball, Jr.  
Ball Homes, LLC  
3609 Walden Drive  
Lexington, KY 40583

SUBJ: Consent Agreement and Final Order  
Docket No. CWA-04-2007-4509(b)  
Gess Properties Parcel 4 and 5  
Lexington, Kentucky

Dear Mr. Ball:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section VI. Payment.

Should you have any questions or problems, please contact Daryl Shoemake, P.G. at (404) 562-9792.

Sincerely,

James D. Giattina, Director  
Water Management Division

Enclosure

cc: Kentucky Department for Environmental  
Protection  
Lexington-Fayette County Urban Government

## 15

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### I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Management Division ("Complainant").

## II. Allegations

3. Ball Homes, LLC ("Ball Homes"), is a limited liability company formed under the laws of the Commonwealth of Kentucky and is, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Ball Homes owned and/or operated a construction site known as Gess Properties Parcel 4 & 5 ("Facility") located in a portion of 400 and 480 Chilesburg Road, Lexington, Kentucky.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including storm water, into navigable waters subject to specific terms and conditions. EPA has granted the Commonwealth of Kentucky through the Department for Environmental Protection ("KDEP") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The KDEP issued a *General KPDES Permit for Storm Water Point Source Discharges, Construction Activities* ("Permit"), Permit No. KYR10, in accordance with the provisions of the Kentucky Revised Statutes Chapter 224 16-050 and pursuant to 401 KAR 5:055, Sections 1 and 5 and the CWA. The Permit was effective October 1, 2002, and expires September 30, 2007.

8. On February 4, 2005, Ball Homes submitted a Notice of Intent ("NOI") requesting permit coverage to the KDEP. A Notice of Coverage was sent to Ball Homes with an effective date of April 11, 2005, and an expiration date of September 30, 2007.

9. Part II of the Permit incorporates 401 KAR 5:065 Section 1 by reference.

A. 401 KAR 5:065 Section 1(4) requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment.

B. 401 KAR 5:065 Section 1(5) of the Permit requires the Permittee to properly operate and maintain at all times all facilities and systems of treatment and control and related appurtenances which are installed or used by the Permittee to achieve compliance with the conditions of the Permit.

10. Part IV.A of the Permit requires the Best Management Practices ("BMP") Plan to include, *inter alia*, the order of major soil disturbing activities, the post construction runoff coefficient, receiving water name, and a site map indicating storm water discharge locations.

11. Part IV.B.3 of the Permit requires the Permittee to install management devices during construction to control the pollutants in storm water discharges that will occur after construction has been completed. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow so that the original physical and biological characteristics and functions of the receiving waters are maintained and protected. The installation of management devices may be subject to Section 404 of the CWA.



12. Part IV.C of the Permit requires the Permittee to ensure that no solid materials, including building materials, are discharged to surface waters, except as authorized by Section 404 of the CWA.

13. Part IV.F of the Permit requires the Permittee to ensure that qualified personnel inspect all storm water control measures, discharge locations, vehicle exits, disturbed areas of the construction site and material storage areas at least once every seven days (and within 24 hours of the end of a storm that is 0.5 inches or greater) and areas that have been temporarily or finally stabilized at least once a month. The Permittee shall make a report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the date of the inspection, major observations relating to the implementation of the BMP Plan, and any corrective actions. The reports shall also be signed in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(11).

14. On April 20, 2006, representatives of EPA in conjunction with the KDEP performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Ball Homes' Facility. EPA's CSWEI was to evaluate the treatment and disposal of storm water at the facility in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the KDEP Permit.

15. As a result of the CSWEI, EPA, Region 4 has determined that Ball Homes discharged storm water associated with industrial activity from its Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

16. As a result of the CSWEI, EPA alleges the following:

A. Ball Homes failed to take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment, as required by Part II of the Permit and 401 KAR 5:065 Section 1(4). Unprotected street inlets allowed the discharge of storm water and sediment into the lower pond. Piles of construction debris, road materials, tires, concrete piping, and other miscellaneous materials located north of the lower pond were not contained or protected from storm water run-off. A concrete wash down area in the southwest portion of the Facility was not properly contained to control potential run-off.

B. Ball Homes failed to reduce the pollutants in storm water discharges by properly operating and maintaining all facilities and systems of treatment and control and related appurtenances in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(5). Several street inlets in Parcel 4 were unprotected as required by the BMP. Silt fences near these inlets and other drop inlets in the southern portion of Parcel 5 needed maintenance by providing the removal of sediments around the inlets and repair of the filter fabric. Rip rap was not installed

around several outlets and was not used for the designated aprons as per the BMP. Geotextile fabric was missing beneath the rip rap or not used at all for the designated apron areas throughout the central portion of the Facility. The street in Parcel 5 near the active construction area was not clear of sediment.

C. Ball Homes failed to develop and implement a BMP Plan that provided a map showing the name(s) of receiving waters and/or the Municipal Separate Storm Sewer System ("MS4"), wetlands, or the storm water discharge/outfall locations; the order of all major soil disturbing activities; the post-construction run-off coefficient value; and a sequence or schedule of implementation of the erosion and sediment control measures on-site, as required by Part IV.A of the Permit.

D. Ball Homes failed to install appropriate management devices during construction to control the pollutants in storm water discharges in accordance with Part IV.B(3) of the Permit. Velocity dissipation devices at some of the discharge locations and along the length of outfall channels were not correctly installed in the central portion of the Facility. Erosion control devices and silt traps were in place either directly into or near the wetlands area, and a check dam installed in a live stream below the lower pond of Parcel 4 and 5, without an approved Permit pursuant to Section 404 of the CWA.

E. Ball Homes failed to ensure that no solid materials, including building materials, are discharged to surface waters in accordance with Part IV.C of the Permit. Debris and trash were present in the creek which flows from the lower pond of the Facility.

F. After March 3, 2006, Ball Homes failed to conduct inspections of all storm water control measures, discharge locations, vehicle exits, and disturbed areas of the Facility in accordance with Part IV.F of the Permit. Additionally, Ball Homes failed to sign inspection reports prior to March 3, 2006, in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(11).

17. Therefore, Ball Homes has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with Parts II, IV.A, IV.B.3, IV.C, and IV.F of the Permit.

### **III. Stipulations and Findings**

18. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40

C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

19. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

20. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

21. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

22. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

23. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

24. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

25. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that Forty Thousand Dollars (\$40,000.00) is an appropriate civil penalty to settle this action.

26. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:



U.S. Environmental Protection Agency  
Cincinnati Accounting Operations  
Mellon Lockbox 371099M  
Pittsburgh, PA 15251-7099.

27. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

and

Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Programs Enforcement Branch  
Water Management Division  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960.

28. The penalty amount specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

29. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

30. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount

of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

## **V. General Provisions**

31. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

32. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

33. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

34. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

35. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

36. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

37. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

38. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Judy Marshall  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960  
(404) 562-9533.

For Respondent:

David A. Smart  
Stoll Keenon Ogden PLLC  
300 West Vine Street  
Lexington, Kentucky 40507-1801  
(859) 231-3056.

39. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

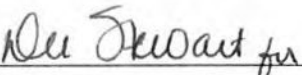
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#### **VI. Effective Date**

41. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

#### **AGREED AND CONSENTED TO:**

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
James D. Giattina, Director  
Water Management Division  
U.S. EPA Region 4

Date: 3/23/07



For RESPONDENT, BALL HOMES, LLC:



NAME: D. Ray Ball, Jr.  
TITLE: President

Date: 1/24/2007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

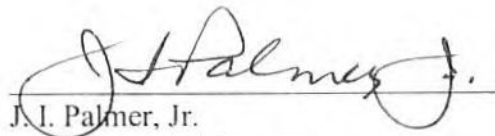
IN THE MATTER OF:	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Ball Homes LLC	)	
Gess Properties, Parcels 4 and 5	)	
Lexington, Kentucky	)	Docket No. CWA-04-2007-4509(b)
_____	)	

**FINAL ORDER**

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: MAR 29 2007

  
J.I. Palmer, Jr.  
Regional Administrator

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Ball Homes, LLC, Lexington, Kentucky**, Docket No. **CWA-04-2007-4509(b)** (filed with the Regional Hearing Clerk on APR 10 2007, 2007) was served on APR 10 2007, 2007, in the manner specified to each of the persons listed below.

**By hand-delivery:**

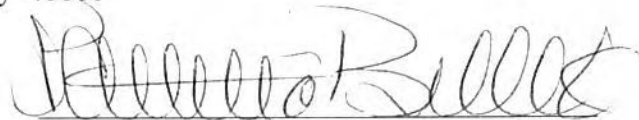
Judy K. Marshall  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

**By certified mail,  
return receipt requested:**

David A. Smart, Esq.  
Stoll Keenon Ogden PLLC  
300 West Vine Street  
Lexington, Kentucky 40507-1801

Mr. D. Ray Ball, Jr.  
Ball Homes, LLC  
3609 Walden Drive  
Lexington, Kentucky 40583

Ms. Susan Rose Green, Director  
Division of Enforcement  
Kentucky Department of Environmental Protection  
14 Reilly Road  
Frankfort, Kentucky 40601



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511



EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 4/5/07  
(Name) (Date)

in the WMD/WPEB/GES at (404) 562- 9733  
(Office) (Telephone Number)

☐ Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

☒ Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

☐ SF Judicial Order/Consent Decree  
DOJ COLLECTS

☐ Oversight Billing - Cost Package required:  
Sent with bill

☐ Other Receivable

☐ Not sent with bill

☐ This is an original debt

☐ Oversight Billing - Cost Package not required

☐ This is a modification

PAYEE: BALL HYNES, LLC - Goss Properties, Accord 4a S, Lexington, Ky  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 40,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2007-4509(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

WMD

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date: \_\_\_\_\_

**DISTRIBUTION:**

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- |  |                             |
|--|-----------------------------|
| 1. Debt Tracking Officer                 | 2. Originating Office (EAD) |
| Environmental Enforcement Section        | Designated Program Office   |
| Department of Justice RM 1647            |                             |
| P.O. Box 7611, Benjamin Franklin Station |                             |
| Washington, D.C. 20044                   |                             |

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM  
PROGRAM SPECIFIC INFORMATION  
PROGRAM: \_\_\_\_\_

Case Docket Control Number: CWA-04-2007-4509(b)

Total Amount Due: \$140,000

☒

Full payment due 30 days after issuance date of Signed CA/FD

☐

Installment payments to be paid:

Amount Due:

Date Due:

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

APR 10 2007

CERTIFIED MAIL 7005 3110 0003 6266 0110  
RETURN RECEIPT REQUESTED

Mr. D. Ray Ball, Jr.  
Ball Homes, LLC  
3609 Walden Drive  
Lexington, KY 40583

SUBJ: Consent Agreement and Final Order  
Docket No. CWA-04-2007-4509(b)  
Gess Properties Parcel 4 and 5  
Lexington, Kentucky

Dear Mr. Ball:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section VI. Payment.

Should you have any questions or problems, please contact Daryl Shoemake, P.G. at (404) 562-9792.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim Stewart Jr.", though the caption identifies the signatory as James D. Giattina.

James D. Giattina, Director  
Water Management Division

Enclosure

cc: Kentucky Department for Environmental  
Protection  
Lexington-Fayette County Urban Government



## 15

)

MENT AND  
2007-4509(b)

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1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Management Division ("Complainant").

## MS

3 Ball Homes, LLC ("Ball Homes"), is a limited liability company formed under  
the laws of the Commonwealth of Kentucky and is, therefore, a "person" within the meaning of  
Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Ball Homes owned and/or operated a construction site known as Gess Properties Parcel 4 & 5 ("Facility") located in a portion of 400 and 480 Chilesburg Road, Lexington, Kentucky.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including storm water, into navigable waters subject to specific terms and conditions. EPA has granted the Commonwealth of Kentucky through the Department for Environmental Protection ("KDEP") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The KDEP issued a *General KPDES Permit for Storm Water Point Source Discharges, Construction Activities* ("Permit"), Permit No. KYR10, in accordance with the provisions of the Kentucky Revised Statutes Chapter 224 16-050 and pursuant to 401 KAR 5:055, Sections 1 and 5 and the CWA. The Permit was effective October 1, 2002, and expires September 30, 2007.

8. On February 4, 2005, Ball Homes submitted a Notice of Intent ("NOI") requesting permit coverage to the KDEP. A Notice of Coverage was sent to Ball Homes with an effective date of April 11, 2005, and an expiration date of September 30, 2007.

9. Part II of the Permit incorporates 401 KAR 5:065 Section 1 by reference.

A. 401 KAR 5:065 Section 1(4) requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment.

B. 401 KAR 5:065 Section 1(5) of the Permit requires the Permittee to properly operate and maintain at all times all facilities and systems of treatment and control and related appurtenances which are installed or used by the Permittee to achieve compliance with the conditions of the Permit.

10. Part IV.A of the Permit requires the Best Management Practices ("BMP") Plan to include, *inter alia*, the order of major soil disturbing activities, the post construction runoff coefficient, receiving water name, and a site map indicating storm water discharge locations.

11. Part IV.B.3 of the Permit requires the Permittee to install management devices during construction to control the pollutants in storm water discharges that will occur after construction has been completed. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow so that the original physical and biological characteristics and functions of the receiving waters are maintained and protected. The installation of management devices may be subject to Section 404 of the CWA.

12. Part IV.C of the Permit requires the Permittee to ensure that no solid materials, including building materials, are discharged to surface waters, except as authorized by Section 404 of the CWA.

13. Part IV.F of the Permit requires the Permittee to ensure that qualified personnel inspect all storm water control measures, discharge locations, vehicle exits, disturbed areas of the construction site and material storage areas at least once every seven days (and within 24 hours of the end of a storm that is 0.5 inches or greater) and areas that have been temporarily or finally stabilized at least once a month. The Permittee shall make a report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the date of the inspection, major observations relating to the implementation of the BMP Plan, and any corrective actions. The reports shall also be signed in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(11).

14. On April 20, 2006, representatives of EPA in conjunction with the KDEP performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Ball Homes' Facility. EPA's CSWEI was to evaluate the treatment and disposal of storm water at the facility in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the KDEP Permit.

15. As a result of the CSWEI, EPA, Region 4 has determined that Ball Homes discharged storm water associated with industrial activity from its Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

16. As a result of the CSWEI, EPA alleges the following:

A. Ball Homes failed to take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment, as required by Part II of the Permit and 401 KAR 5:065 Section 1(4). Unprotected street inlets allowed the discharge of storm water and sediment into the lower pond. Piles of construction debris, road materials, tires, concrete piping, and other miscellaneous materials located north of the lower pond were not contained or protected from storm water run-off. A concrete wash down area in the southwest portion of the Facility was not properly contained to control potential run-off.

B. Ball Homes failed to reduce the pollutants in storm water discharges by properly operating and maintaining all facilities and systems of treatment and control and related appurtenances in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(5). Several street inlets in Parcel 4 were unprotected as required by the BMP. Silt fences near these inlets and other drop inlets in the southern portion of Parcel 5 needed maintenance by providing the removal of sediments around the inlets and repair of the filter fabric. Rip rap was not installed



around several outlets and was not used for the designated aprons as per the BMP. Geotextile fabric was missing beneath the rip rap or not used at all for the designated apron areas throughout the central portion of the Facility. The street in Parcel 5 near the active construction area was not clear of sediment.

C. Ball Homes failed to develop and implement a BMP Plan that provided a map showing the name(s) of receiving waters and/or the Municipal Separate Storm Sewer System ("MS4"), wetlands, or the storm water discharge/outfall locations; the order of all major soil disturbing activities; the post-construction run-off coefficient value; and a sequence or schedule of implementation of the erosion and sediment control measures on-site, as required by Part IV.A of the Permit.

D. Ball Homes failed to install appropriate management devices during construction to control the pollutants in storm water discharges in accordance with Part IV.B(3) of the Permit. Velocity dissipation devices at some of the discharge locations and along the length of outfall channels were not correctly installed in the central portion of the Facility. Erosion control devices and silt traps were in place either directly into or near the wetlands area, and a check dam installed in a live stream below the lower pond of Parcel 4 and 5, without an approved Permit pursuant to Section 404 of the CWA.

E. Ball Homes failed to ensure that no solid materials, including building materials, are discharged to surface waters in accordance with Part IV.C of the Permit. Debris and trash were present in the creek which flows from the lower pond of the Facility.

F. After March 3, 2006, Ball Homes failed to conduct inspections of all storm water control measures, discharge locations, vehicle exits, and disturbed areas of the Facility in accordance with Part IV.F of the Permit. Additionally, Ball Homes failed to sign inspection reports prior to March 3, 2006, in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(11).

17. Therefore, Ball Homes has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with Parts II, IV.A, IV.B.3, IV.C, and IV.F of the Permit.

### **III. Stipulations and Findings**

18. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40

C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

19. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

20. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

21. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

22. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

23. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

24. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

25. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that Forty Thousand Dollars (\$40,000.00) is an appropriate civil penalty to settle this action.

26. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Programs Enforcement Branch  
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32. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

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34. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

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38. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Judy Marshall  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960  
(404) 562-9533.

For Respondent:

David A. Smart  
Stoil Keenon Ogden PLLC  
300 West Vine Street  
Lexington, Kentucky 40507-1801  
(859) 231-3056.

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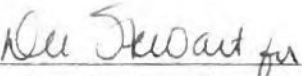
40. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the Commonwealth of Kentucky was provided a prior opportunity to consult with Complainant regarding this matter.

#### **VI. Effective Date**

41. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.


#### **AGREED AND CONSENTED TO:**

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
James D. Giattina, Director  
Water Management Division  
U.S. EPA Region 4

Date: 3/23/07

For RESPONDENT, BALL HOMES, LLC:

  
\_\_\_\_\_  
NAME: D. Ray Ball, Jr.  
TITLE: President

Date: 1/29/2007





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 25 2006

CERTIFIED MAIL 7005 3110 0002 5134 3964  
RETURN RECEIPT REQUESTED

Mr. D. Ray Ball, Jr.  
Ball Homes LLC  
3609 Walden Drive  
Lexington, KY 40583

PC'S  
KYR106418

SUBJ: Administrative Order No. CWA 04-2006-4786  
NPDES Permit Nos. KYR106418 and KYR106419  
Gess Properties Parcel 4 and 5, Lexington, KY

Dear Mr. Ball:

On April 20, 2006, the Environmental Protection Agency (EPA) and the Kentucky Department for Environmental Protection (KDEP) performed a Compliance Storm Water Evaluation Inspection (CSWEI) of Ball Homes LLC at the facility known as Gess Properties Parcel 4 and 5 (Facility). EPA's participation in this inspection was to evaluate the Facility's compliance with the treatment and disposal of storm water in accordance with the requirements of Sections 301 and 402(p) of the Clean Water Act (CWA), 33 U.S.C. §§ 1311 and 1342(p), the regulations promulgated thereunder at 40 Code of Federal Regulations § 122.26, and the *General KPDES Permit for Storm Water Point Source Discharges, Construction Activities* (the Permit), Permit No. KYR10, effective October 1, 2002. The CSWEI revealed that Ball Homes LLC failed to comply with the requirements of the Permit and CWA as outlined in the enclosed inspection report and Administrative Order (AO).

As a result of the CSWEI and pursuant to Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), the Director of the Water Management Division, EPA Region 4, has determined that Ball Homes LLC is in violation of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p). As a result, the Director has issued the enclosed AO.

This AO does not replace, modify or eliminate any other requirement of the CWA or the Permit. Notwithstanding the issuance of this AO, EPA retains the right to bring further enforcement action under Sections 309(d) or 309(g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g), for the violations cited therein or for any other violation of the CWA. Violations of the CWA, including requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit or an AO issued under Section 309(a) of the CWA, remain subject to a civil penalty of up to \$32,500 per day for each violation, pursuant to Sections 309(d) or 309(g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g), as amended by the *Civil Monetary Penalty Inflation Adjustment Rule*, 69 Fed. Reg. 7121 (February 13, 2004). Such violations may also be subject to criminal penalties pursuant to Section 309(c) of the CWA, 33 U.S.C. § 1319©.

In order to resolve the Facility's liability for civil penalties, EPA is offering your Facility the opportunity to discuss the violations outlined above. EPA requests that representatives of Ball Homes LLC be present in this office on Thursday, August 3, 2006, at 10:00 p.m. to discuss the violations and EPA's possible enforcement action. In lieu of appearing in EPA's office for this meeting, a telephone conference may be scheduled. The representatives should be prepared to provide all relevant information with documentation, pertaining to the above referenced violation including, but not limited to, any financial information which may reflect your ability to pay a penalty. You have the right to be represented by legal counsel. Please contact Mr. Daryl Shoemake, P.G., Enforcement Officer at (404) 562-9792 within five (5) days of receipt of this letter to set up a telephone conference or to reschedule the meeting. Failure to appear may result in enforcement action against your facility.

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* for your use and to assist you in understanding the compliance assistance resources and tools available to you. However, any decision to seek compliance assistance at this time does not relieve you of your obligation to EPA, does not create any new rights or defenses, and will not affect EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission (SEC) requires its registrants to periodically disclose environmental legal proceedings in statements filed with the Commission. To assist you, EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*.

Should you have any questions concerning the requirements contained in the enclosed AO, please contact either Ms. Alfreda Freeman, Chief of the Central Enforcement Section at (404) 562-8977 or Mr. Shoemake, at (404) 562-9792 or address written comments to the address on the letterhead. Legal inquiries should be directed to Ms. Judy Marshall, Associate Regional Counsel, at (404) 562-9533.

Sincerely,



Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division

Enclosures

cc: Kentucky Department for Environmental  
Protection  
Lexington-Fayette County Urban Government



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
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61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 25 2006

CERTIFIED MAIL 7005 3110 0002 5134 4084  
RETURN RECEIPT REQUESTED

Ms. Susan Rose Green, Director  
Division of Enforcement  
Kentucky Department for Environmental Protection  
14 Reilly Road  
Frankfort, KY 40601

SUBJ: Administrative Order No. CWA 04-2006-4786  
NPDES Permit Nos. KYR106418 and KYR106419  
Gess Properties Parcel 4 and 5, Lexington, KY

Dear Ms. Green:

Pursuant to Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a), I have determined that the above referenced facility is in violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p). As a result, I have issued an Administrative Order (AO), a copy of which is enclosed for your reference. The AO is presently being served. Also enclosed is a copy of the Compliance Storm Water Evaluation Inspection performed at the site.

Sincerely,

A handwritten signature in black ink, appearing to read "J. D. Giattina".

James D. Giattina, Director  
Water Management Division

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:	)	ADMINISTRATIVE ORDER
	)	
Ball Homes LLC	)	DOCKET NO. CWA-04-2006-4786
Gess Properties, Parcels 4 and 5	)	
Lexington, Kentucky	)	
_____	)	

ADMINISTRATIVE ORDER

**I. Statutory Authority**

1. Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency ("EPA") finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that EPA determines to be reasonable.

2. The following Findings are made and Order issued pursuant to the authority vested in EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Water Management Division, EPA, Region 4.

**II. Findings**

3. Ball Homes LLC ("Ball Homes"), is a limited liability company formed under the laws of the Commonwealth of Kentucky and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Ball Homes owned and/or operated a construction site known as Gess Properties Parcel 4 & 5 ("Facility") located in a portion of 400 and 480 Chilesburg Road, Lexington, Kentucky.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including storm water, into navigable waters subject to specific terms and conditions. EPA has granted the Commonwealth of Kentucky through the Department of Environmental Protection ("KDEP") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The KDEP issued a *General KPDES Permit for Storm Water Point Source Discharges, Construction Activities* (the Permit), Permit No. KYR10, in accordance with the provisions of the Kentucky Revised Statutes Chapter 224 16-050 and pursuant to 401 Kentucky Administrative Regulation (KAR) 5:055, Sections 1 and 5 and the CWA. The Permit was effective October 1, 2002, and expires on September 30, 2007.

8. The Permit is a Kentucky statewide NPDES general permit governing storm water point source discharges associated with construction activities including clearing, grading, and excavation activities except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale.

9. On February 4, 2005, Ball Homes submitted a Notice of Intent ("NOI") requesting permit coverage to the KDEP. A Notice of Coverage was sent to Ball Homes with an effective date of April 11, 2005, and an expiration date of September 30, 2007.

10. Part II of the Permit incorporates 401 KAR 5:065 Section 1 by reference.

A. 401 KAR 5:065 Section 1(4) requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment.

B. 401 KAR 5:065 Section 1(5) of the Permit requires the Permittee to properly operate and maintain at all times all facilities and systems of treatment and control and related appurtenances which are installed or used by the Permittee to achieve compliance with the conditions of the Permit.

11. Part IV.A of the Permit requires the Best Management Practices ("BMP") Plan to include, *inter alia*, the order of major soil disturbing activities, the post construction runoff coefficient, receiving water name, and a site map indicating storm water discharge locations.

12. Part IV.B.3 of the Permit requires the Permittee to install management devices during construction to control the pollutants in storm water discharges that will occur after construction has been completed. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow so that the original physical and biological characteristics and functions of the receiving waters

are maintained and protected. The installation of management devices may be subject to Section 404 of the CWA.

13. Part IV.C of the Permit requires the Permittee to ensure that no solid materials, including building materials, are discharged to surface waters, except as authorized by Section 404 of the CWA.

14. Part IV.F of the Permit requires the Permittee to ensure that qualified personnel inspect all storm water control measures, discharge locations, vehicle exits, disturbed areas of the construction site and material storage areas at least once every seven days (and within 24 hours of the end of a storm that is 0.5 inches or greater) and areas that have been temporarily or finally stabilized at least once a month. The Permittee shall make a report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the date of the inspection, major observations relating to the implementation of the BMP Plan, and any corrective actions. The reports shall also be signed in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(11).

15. On April 20, 2006, representatives of EPA in conjunction with the KDEP performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Ball Homes' Facility. EPA's CSWEI was to evaluate the treatment and disposal of storm water at the facility in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the KDEP Permit.

16. As a result of the CSWEI, EPA, Region 4 has determined that Ball Homes discharged storm water associated with industrial activity from its Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

17. During the CSWEI, EPA inspectors observed the following:

A. Ball Homes failed to take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment, as required by Part II of the Permit and 401 KAR 5:065 Section 1(4). Unprotected street inlets allowed the discharge of storm water and sediment into the lower pond. Piles of construction debris, road materials, tires, concrete piping, and other miscellaneous materials located north of the lower pond were not contained or protected from storm water run-off. A concrete wash down area in the southwest portion of the Facility was not properly contained to control potential run-off.

B. Ball Homes failed to reduce the pollutants in storm water discharges by properly operating and maintaining all facilities and systems of treatment and control and related appurtenances in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(5). Several street inlets in Parcel 4 were unprotected as required by the BMP. Silt fences near these inlets and other drop inlets in the southern portion of Parcel 5 needed maintenance by providing the

removal of sediments around the inlets and repair of the filter fabric. Rip rap was not installed around several outlets and was not used for the designated aprons as per the BMP. Geotextile fabric was missing beneath the rip rap or not used at all for the designated apron areas throughout the central portion of the Facility. The street in Parcel 5 near the active construction area was not clear of sediment.

C. Ball Homes failed to develop and implement a BMP Plan that provided a map showing the name(s) of receiving waters and/or the Municipal Separate Storm Sewer System ("MS4"), wetlands, or the storm water discharge/outfall locations; the order of all major soil disturbing activities; the post-construction run-off coefficient value; and a sequence or schedule of implementation of the erosion and sediment control measures on-site, as required by Part IV.A of the Permit.

D. Ball Homes failed to install appropriate management devices during construction to control the pollutants in storm water discharges in accordance with Part IV.B(3) of the Permit. Velocity dissipation devices at some of the discharge locations and along the length of outfall channels were not correctly installed in the central portion of the Facility. Erosion control devices and silt traps were in place either directly into or near the wetlands area, and a check dam installed in a live stream below the lower pond of Parcel 4 and 5, without an approved Permit pursuant to Section 404 of the CWA.

E. Ball Homes failed to ensure that no solid materials, including building materials, are discharged to surface waters in accordance with Part IV.C of the Permit. Debris and trash were present in the creek which flows from the lower pond of the Facility.

F. After March 3, 2006, Ball Homes failed to conduct inspections of all storm water control measures, discharge locations, vehicle exits, and disturbed areas of the Facility in accordance with Part IV.F of the Permit. Additionally, Ball Homes failed to sign inspection reports prior to March 3, 2006, in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(11).

18. Therefore, Ball Homes has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with Parts II, IV.A, IV.B.3, IV.C, and IV.F of the Permit.

### **III. Order**

19. Based on the foregoing Findings and pursuant to the authority of Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), IT IS HEREBY ORDERED that Ball Homes comply with the following requirements at its Facility:

A. Immediately upon receipt of this Order, as required by Part II of the Permit and 401 KAR 5:065 Section 1(4), take all reasonable steps to minimize or prevent any discharge



in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment. Specifically, address the unprotected street inlets discharging storm water and sediment into the lower pond; the debris piles located north of the lower pond that are not contained or protected from storm water run-off; and the concrete wash down area in the southwest portion of the Facility that is not properly contained to control potential run-off. Within thirty (30) days of the date of receipt of this Order, submit documentation that this requirement of the Order has been met.

B. Immediately upon receipt of this Order, as required by Part II of the Permit and 401 KAR 5:065 Section 1(5), properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used to achieve compliance. Specifically, install erosion controls at the street inlets in Parcel 4 and repair the silt fences near these inlets; maintain the drop inlets in the southern portion of Parcel 5 and maintain/repair the associated filter fabric; install rip rap around all outlets and designated aprons as per the BMP Plan; install geotextile fabric beneath the rip rap and the designated apron areas throughout the central portion of the Facility; and clean and maintain the streets in Parcel 5 near the active construction areas. Within thirty (30) days of the date of receipt of this Order, submit documentation that this requirement of the Order has been met.

C. Immediately upon receipt of this Order, as required by Part IV.A of the Permit, modify the BMP Plan to include a map showing the name(s) of receiving waters and/or the MS4, wetlands, the storm water discharge/outfall locations, the order of major soil disturbing activities, and the post-construction run-off coefficient value. Within thirty (30) days of the date of receipt of this Order, submit documentation that this requirement of the Order has been met.

D. Immediately upon receipt of this Order, as required by Part IV.B.3 of the Permit, install management devices during construction to control the pollutants in storm water discharges that will occur after construction has been completed. Specifically, correctly install the velocity dissipation devices at the discharge locations and along the length of outfall channels to provide non-erosive flow in the central portion of the Facility as presented in the BMP Plan; and address the erosion control devices, silt traps and check dam that are in place either directly into or near the wetlands area and the live stream below the lower pond of Parcel 4 and 5 by either removing or obtaining a Permit pursuant to Section 404 of the CWA. Within thirty (30) days of the date of receipt of this Order, submit documentation that this requirement of the Order has been met.

E. Immediately upon receipt of this Order, as required by Part IV.C of the Permit, cease the discharge of solid materials including building materials, except as authorized by a Section 404 Permit. Specifically, address the debris and trash present in the creek which flows from the lower pond of the Facility. Within thirty (30) days of the date of receipt of this Order, submit documentation that this requirement of the Order has been met.

F. Immediately upon receipt of this Order, as required by Part IV.F of the Permit, ensure that qualified personnel inspect all storm water control measures, discharge locations, vehicle exits, disturbed areas of the construction site and material storage areas at least once every seven days (and within 24 hours of the end of a storm that is 0.5 inches or greater) and areas that have been temporarily or finally stabilized at least once a month. Institute a reporting program summarizing the scope of the inspections, names and qualifications of personnel making the inspections, the dates of the inspections, major observations relating to the implementation of the BMP Plan, and any corrective actions taken. These reports shall be signed in accordance with Part II of the Permit and 401 KAR 5:065 Section 1(11). Submit copies of the inspection reports continuing for three (3) months after the date of this Order. Within thirty (30) days of receipt of this Order, submit documentation that an inspection program has been instituted.

20. Ball Homes must submit a request for any extension of time to comply with the requirements of this Order in writing, and must include the reasons for the extension request and a date when compliance will be achieved. Any extension granted must be made by EPA in writing.

21. All reports, notifications, and submittals required by this Order shall be signed by a duly authorized representative of Ball Homes as specified by 40 C.F.R. §§ 122.22(b)(2) and (d) and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

22. All submissions required by this Order shall be sent by certified mail or its equivalent to the following addressees:

Mr. Douglas F. Mundrick, P.E., Chief  
ATTN: Daryl Shoemake, P.G., Enforcement Officer  
Water Programs Enforcement Branch  
Water Management Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

and

Ms. Susan Rose Green, Director  
Division of Enforcement  
Kentucky Department of Environmental Protection  
14 Reilly Road  
Frankfort, KY 40601

#### **IV. General Provisions**

23. Failure to comply with the requirements herein shall constitute a violation of this Order and the CWA, and may subject Ball Homes to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

24. This Order shall not relieve Ball Homes of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Compliance with this Order shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

25. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Ball Home's violation of this Order or of the statutes and regulations upon which this Order is based, or for Ball Home's violation of any federal or state statute, regulation or permit.

26. This Order applies to and is binding upon Ball Homes and its officers, directors, employees, agents, successors, and assigns.

27. Any change in the legal status of Ball Home's Facility, including but not limited to any transfer of assets of real or personal property, shall not alter Ball Home's responsibilities under this Order.

28. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), EPA has sent a copy of this Order to the Commonwealth of Kentucky.

29. The provisions of this Order shall be deemed satisfied upon a determination by EPA that Ball Homes has fully completed and implemented the actions required by this Order.

**VI. Effective Date**

30. The effective date of this Order shall be the date upon which it is received by Ball Homes.

**IT IS SO ORDERED,  
BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

A handwritten signature in dark ink, appearing to read "J. D. Giattina", is written over a horizontal line.

James D. Giattina, Director  
Water Management Division

Date: July 25, 2006



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

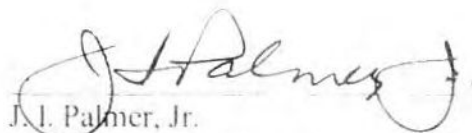
IN THE MATTER OF:	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Ball Homes LLC	)	
Gess Properties, Parcels 4 and 5	)	
Lexington, Kentucky	)	Docket No. CWA-04-2007-4509(b)
_____	)	

**FINAL ORDER**

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: \_\_\_\_\_

  
J. I. Palmer, Jr.  
Regional Administrator

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Ball Homes, LLC, Lexington, Kentucky**, Docket No. **CWA-04-2007-4509(b)** (filed with the Regional Hearing Clerk on APR 10 2007, 2007) was served on APR 10 2007, 2007, in the manner specified to each of the persons listed below.

**By hand-delivery:**

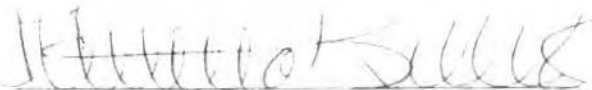
Judy K. Marshall  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

**By certified mail,  
return receipt requested:**

David A. Smart, Esq.  
Stoll Keenon Ogden PLLC  
300 West Vine Street  
Lexington, Kentucky 40507-1801

Mr. D. Ray Ball, Jr.  
Ball Homes, LLC  
3609 Walden Drive  
Lexington, Kentucky 40583

Ms. Susan Rose Green, Director  
Division of Enforcement  
Kentucky Department of Environmental Protection  
14 Reilly Road  
Frankfort, Kentucky 40601



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511